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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 August 2001, at 3 p.m.

Chairman: Mr. WEISSBRODT

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The meeting was called to order at 3 p.m.

ADMINISTRATION OF JUSTICE (agenda item 3) (continued) (E/CN.4/Sub.2/2001/6 and 8 and Corr.1; E/CN.4/Sub.2/2001/NGO/5, 9 and 16; E/CN.4/Sub.2/2000/44 and 59 and Corr.1 and Add.1)

1. Ms. BOWDEN (Liberation), speaking also on behalf of the Asian Buddhist Conference for Peace, mentioned several regions of the world where the administration of justice was a cause for concern.

2. The first such region was the Chittagong Hill Tracts, in Bangladesh, where fundamental elements of the peace accord signed in 1997 had not been implemented. The refugees who had returned to the region had still not been rehabilitated, the land confiscated from the indigenous people had not been returned to them, and the military camps had not been withdrawn. The last element in particular had created a climate of violence, since human rights abuses against the indigenous people were committed on a daily basis, not only by members of the armed forces but also by the police and Bengali settlers. The organizations she represented were calling for urgent implementation of the peace accord and the establishment of a mechanism to ensure that justice was restored in the region.

3. In Malaysia, the arbitrary detention of civilians was increasing and, according to more and more sources, those arrested were ill-treated and tortured. Human rights groups supported the calls of citizens for the repeal of the Internal Security Act, which the Government was using to justify the violations.

4. The human rights situation in Jammu and Kashmir would remain intolerable until the Indian Government recognized that the situation was critical. Since 1989, approximately 34,000 persons had been killed and the very people who administered justice were believed to be the perpetrators of massive human rights violations.

5. In the Moluccas, the escalating conflict between the Christian and Muslim communities was leading to growing violence. The Government should implement its stated policy of removing non-Moluccan members of the Laskar Jihad from the two provinces. It should also ensure that the armed forces and the police played a genuine peacekeeping role and refrained from taking sides in the conflict.

6. Lastly, both organizations were very concerned by the increasing level of violence in the Indian State of Assam, where the assassination and hostage-taking of innocent people were increasingly frequent, as were violations of their economic and social rights. In that region, corrupt officials and poor economic development had exacerbated demands for self-determination and secession, which had heightened the complexity of the conflict.

7. In all the regions mentioned, the international community must be vigilant in ensuring that the legislative and judicial systems were not used as a cover for massive and flagrant human rights violations.

8. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that in many countries, particularly in South Asia, State interference in the administration of justice, whether in the appointment of judges or even through the tenor of their verdicts, created a climate of uncertainty and repression that paralysed the judicial system. Recently, in one South Asian State, government authorities had ordered the court to pronounce a specific judgement in order to settle a political score against a former Prime Minister, and the judge concerned had been obliged to acquiesce. In many countries of the region, it was not only the State that was involved; non-State actors had even murdered witnesses, lawyers and judges, thus preventing any attempt at opposition to their will.

9. The Special Rapporteur on the independence of judges and lawyers had drawn attention to well-documented cases where justice had been violated in certain countries, particularly in South Asia, to no avail. The international community should do everything possible to ensure that the impact of the Commission on Human Rights in that area was more effective and lasting. It was also important that civil society, at the international level, should give greater attention to the issue of the independence of the judiciary.

10. There was also an urgent need to address the problem of the decline of democracy in many societies, including States that called themselves democratic. In such countries, the system of justice was seriously threatened by armed groups over which the State had no control or against which it hesitated to intervene. Consequently, those armed groups had enough coercive power to exert a disproportionate influence on local courts.

11. In conclusion, it was necessary to approach the issue of the administration of justice from all angles, and not merely from the perspective of the tension between the executive and the judiciary. It was also necessary to examine the factors that influenced the socio-political context in which the issues of justice and freedom were grounded.

12. Mr. GOONESEKERE said he was concerned by the fact that in several countries, including his own, there was a feeling that although crimes were punished, sanctions were inadequate and the investigation proceedings did not allow the guilt of the accused person to be established beyond all reasonable doubt. Above all, some people considered that the criminal system overprotected the accused. He cited the example of a judge of the Sri Lankan Supreme Court who had sentenced a murderer to 20 years' imprisonment. Having benefited from reductions in his sentence and been freed after six years in prison, the murderer had in turn been murdered by a group of individuals wanting to avenge the victim. What sentence should the judge pass on those individuals, in view of the fact that revenge was one of man's basic instincts? Based on that example, there was cause to wonder at the position of judges, who had both to apply the law and to ensure that the victims' families were not left with a sense of injustice.

13. It was very difficult to establish the guilt of an individual. In countries under the common law system, justice was based on the principle that it was preferable to leave someone unpunished than to convict an innocent person. In other words, people went unpunished, so long as any doubt remained about their guilt. A similar situation existed in the case of perpetrators of

human rights violations, because the same criminal legislation applied to ordinary citizens, police officers and members of the armed forces. When impunity occurred, the State was accused of being ineffective or the law was said to be inadequate. Should the system and the law then be changed? Should there be less concern for protecting the accused?

14. He was certainly fully opposed to the death penalty. He was thoroughly convinced that the State should not deliberately take the life of a human being. However, the question remained: what should be done with criminals who posed a danger to society? In what conditions should such dangerous individuals who were not subject to the death penalty be detained? How could maximum security be ensured in prisons and how could prisoners be protected against the pernicious influence of criminals? And what about the question of the protection of the human rights of those sentenced to life imprisonment? In the United States of America, one such prisoner had asked to be executed rather than spend his life in prison. In Sri Lanka, where the death penalty had not been legally abolished but was no longer applied, public opinion demanded that it should be re-established and practised. That was the case in other countries, as well.

15. Mr. KARTASHKIN challenged Mr. Goonesekere's remarks. It was true that countries that had abolished the death penalty were tending to reintroduce it, under the pressure of public opinion. However, it was not wise to systematically follow public opinion. Indeed, the danger of the death penalty, apart from its inhuman character, lay in the fact that the real perpetrator of a crime was often discovered after an innocent person had been executed. In his country, the Russian Federation, public opinion was also in favour of the death penalty. In fact, as it was already provided for in the Criminal Code, there was no need to re-establish it. However, the Head of State was strongly opposed to the death penalty and there were no executions, although he was not supported by the Russian Parliament. The latter had in fact refused to ratify Protocol No. 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, the effect of which would have been to remove the death penalty from the Russian Criminal Code.

16. With regard to detention, he would be in favour of introducing in all countries the principle of habeas corpus, which consisted in remanding a suspect in custody only on the decision of a judge. The length of time a person could be held for questioning should also be limited, and should never exceed 48 hours; the same was true of detention during an investigation, because it was inconceivable that a suspect should be kept in police custody for months and even years. Consideration should therefore be given to formulating recommendations about time limits to be respected during criminal proceedings. Lastly, in order to make the judicial system more complete and ensure more effective protection of human rights, the institution of a human rights mediator, or Ombudsman, and the setting up of national human rights commissions, as had been done in the Russian Federation, should become widespread. The Ombudsman examined complaints only when all remedies had been exhausted, while the Commissions dealt with complaints in each region at any stage of the proceedings in the event of human rights violations.

17. The CHAIRMAN thanked Mr. Kartashkin for his statement and reminded him of the Sub-Commission's guidelines, according to which experts were advised not to refer to the situation in their own country.

18. Mr. ZIAUDDIN (Transnational Radical Party), speaking also on behalf of Ain O Salish Kendr, a non-governmental organization (NGO), said that history had an annoying tendency to repeat itself when nothing was done to repair wrongs that had been committed, as the situation in Afghanistan and Pakistan demonstrated.

19. Afghanistan was on the verge of collapse. The grave, systematic violations of human rights and international humanitarian law that were being committed there were well known, especially on account of the recent report submitted to the Commission on Human Rights by the Special Rapporteur on the situation of human rights in that country (E/CN.4/2001/43 and Add.1). In its resolution 2001/13, the Commission had strongly condemned those violations and had noted with alarm that the Taliban had resumed the conflict, which had resulted in the massive forced displacement of civilians and the indiscriminate destruction of their homes and agricultural lands, thereby eliminating their source of income. The Secretary-General of the United Nations had repeatedly expressed his concern about the situation and had invited the international community and human rights organizations to explore new approaches that would prevent further violations and put an end to the climate of impunity in Afghanistan. Ain O Salish Kendr called upon the Sub-Commission to establish a group of international experts to formulate recommendations to address the issue of impunity in Afghanistan.

20. Pakistan, whose situation was closely linked to that of Afghanistan, needed to deal with its past. The country was immersed in perpetual crisis and had remained unsure of its identity ever since the creation of Bangladesh in 1971 had destroyed its unity. That year, the Pakistani army had perpetrated a genocide during which 3 million people had died and 300,000 women had been raped. For many years, Bangladesh had demanded that the perpetrators of the 1971 genocide should be brought to justice. The man in the street in Pakistan had been completely unaware of the atrocities committed by his country's army until a commission of inquiry, whose findings had been leaked to the Indian press, had recommended that legal proceedings should be brought against high-ranking officers, not for the atrocities they had committed but for errors committed in the performance of their military duties.

21. Ain O Salish Kendr called upon the Pakistani Government to investigate the conduct of Pakistani soldiers in Bangladesh, render an account of the genocide perpetrated in that country and bring those responsible for those atrocities to justice.

22. Mr. KALIMBA (International Work Group for Indigenous Affairs) drew attention to the situation of the Batwa, who accounted for 0.4 per cent and 1 per cent of the populations of Rwanda and Burundi, respectively. The Batwa were completely excluded from political, economic, social and cultural affairs in those countries. In Burundi, no account had been taken of the Batwa in the Arusha peace agreement, and they would therefore have no access to positions of responsibility in the military or in the political system. In Rwanda, many Batwa had been killed in the civil war. Yet the international community had shown no concern for the problems of an indigenous people who might soon disappear from the face of the earth. Some Batwa had been accused of taking part in the massacres and were languishing in prison in Rwanda; there was no news of 2,300 Batwa who had been imprisoned in 1995 and 1996. His organization urged the Sub-Commission to send an expert to Burundi and Rwanda to investigate the situation of the Batwa and to put pressure on the Governments of both countries to change their attitude towards that group.

23. Mr. KHEMAKHEM (Observer for Tunisia) said that since 1987 Tunisia had been making tireless efforts to promote and strengthen human rights and fundamental freedoms as part of a global vision that reconciled economic and social development with the promotion of civil and political rights. The Tunisian authorities had established a comprehensive statutory and institutional framework to consolidate those objectives and to promote greater cohesion, harmony and solidarity within Tunisian society. Reforms had been launched with a view to promoting a culture of democracy, strengthening political pluralism and fostering the full enjoyment by all citizens of their inalienable and indivisible rights. A number of steps had been taken in that regard including the amendment of the Code of Criminal Procedure through a law providing for alternative sentencing and a law reducing the length of police custody; the passing of a law that set out a definition of torture consistent with international standards; the transfer of the prison administration from the Ministry of the Interior to the Ministry of Justice; the creation of the position of judge responsible for the enforcement of judgements; and the passing of a law on the organization of prisons which sought to improve the conditions of detention and facilitate prisoners' social rehabilitation. A number of cases of ill-treatment of detainees had recently come before the courts, resulting in punishments for those responsible and compensation for the victims. A bill on the expansion of the Supreme Council of Justice was under consideration.

24. With a strong commitment to the promotion and protection of indivisible human rights, Tunisia, while proud of its achievements, was aware of the distance it still had to go in order to realize its humanist and global vision of human rights.

25. Mr. DOLGOBORODOV (Observer for the Russian Federation) strongly protested against the inclusion of a paragraph in the report of the Office of the High Commissioner for Human Rights on the list of States that had proclaimed or continued a state of emergency (E/CN.4/Sub.2/2001/6) which read: "The President of the Republic of Chechnya declared a state of emergency with a 30-day duration that included a curfew to deal with an escalating military conflict". The inclusion of such a paragraph in an official United Nations document constituted a challenge to the territorial integrity of a sovereign State Member of the United Nations, in complete violation of the Charter. It was an attempt to legitimize the regime of the "Chechen President", who was subject to prosecution under the law of the Russian Federation. The delegation of the Russian Federation hoped that it was merely a question of carelessness on the part of the authors of the report and did not represent a political position adopted by the Office of the High Commissioner for Human Rights. He recalled that, under article 88 of the Constitution of the Russian Federation, only the President of the Federation had the right to declare a state of emergency on Federation territory, provided he informed the Federation Council and the Duma. It was unfortunate that the authors of the report had not checked their sources. If such an error was repeated, his delegation would be justified in considering it a deliberate act by bandits or members of separatist movements, with all the consequences that implied.

26. Mr. LEGGERI (Observer for Italy) said that at the time of the recent tragic events in Genoa, which the Sub-Commission had discussed, the vast majority of demonstrators had behaved peacefully. Unfortunately, there had been many groups whose sole aim had been to obstruct the Group of Eight (G8) Summit and provoke violent confrontations. Their behaviour had been inspired by urban guerrilla methods and had caused considerable damage in the city.

However, as the Head of State and the President of the Council had indicated, any member of the forces of law and order found guilty of violations would be punished. The Government had already taken a number of severe disciplinary measures involving the dismissal of several senior officials. Meanwhile, Parliament had decided to establish a bicameral commission of inquiry.

27. The Italian Government's firm stand in no way undermined the justification for the range of preventive measures that had been put in place to ensure law and order. It was extremely unfortunate that a peaceful movement for the defence of the poorest of the poor should have been discredited by violent groups within it who were determined to make every international meeting a scene of bloody confrontations. It was even more unfortunate because the attacks had occurred just when the G8 Summit had for the first time included combating poverty and pandemics and the attainment of sustainable development on its agenda.

Statements made in exercise of the right of reply

28. The CHAIRMAN invited any observers who wished to do so to exercise their right of reply.

29. Mr. OULD SIDI HAIBA (Observer for Mauritania) said that an NGO had stated that some people in Mauritania had been arbitrarily arrested, held incommunicado and prevented from consulting their lawyers or seeing their families. Those allegations were groundless, and the NGO appeared to have been misled with regard to trials that had taken place in two major cities, Kaédi and Ayoun. The trials had included public hearings of the parties, held in the presence of representatives of national and international jurists' associations and of the independent press. They were normal proceedings of ordinary law and the accused had been entitled to lawyers and to see their families.

30. Mr. AL-FAIHANI (Observer for Bahrain) said that Mr. Joinet had said, in a statement on Bahrain, that a number of political prisoners in that country had not been released. That was not correct; as a Reuter's press release dated 15 February 2001 had stated, all political prisoners had been released under an amnesty decreed following a referendum. Even the Bahrain Freedom Movement, an extremist political organization, had acknowledged that all persons detained as a threat to the security of the State had been released.

31. Mr. JOINET acknowledged his error and said that all political prisoners in Bahrain had been released.

32. Mr. Gil-Sou SHIN (Observer for the Republic of Korea), replying to the observer for the International Confederation of Free Trade Unions (ICFTU), said that his Government had taken major steps to strengthen the right to freedom of association. As part of that policy, the Government authorized all union activities, including peaceful demonstrations, provided that the relevant regulations were observed. Naturally, however, the political authorities were determined to prevent violent action, which was prohibited under the law.

33. The CHAIRMAN drew members' attention to the new version of the revised agenda that had been distributed to them in a document without a symbol, and in English only. It reproduced the revised agenda (E/CN.4/Sub.2/2001/1/Rev.1) and gave details of the issues to be considered under each agenda item. He suggested that the title of agenda item 5 (b) should be amended to refer specifically to the prevention of discrimination against indigenous peoples.

34. Mr. EIDE supported the Chairman's suggestion regarding agenda item 5 (b) and suggested that the same should apply to agenda item 5 (c).

35. The CHAIRMAN invited the Sub-Commission to retain the new version of the revised agenda, which seemed to him to be more explicit about the work to be done. If there were no objections, he would take it that the Sub-Commission wished to adopt the new version, as orally amended.

36. It was so decided.

37. Ms. HAMPSON, referring to the question of human rights in states of emergency, said that some countries had been under a state of emergency for a very long time. That was the case in Egypt, where a state of emergency had been declared in 1981, and in the Syrian Arab Republic, which had declared a state of emergency in 1963. She recalled that the declaration of a state of emergency did not automatically entail derogations from a country's obligations under international law. In that regard, she noted that the Human Rights Committee had just adopted, at its seventy-second session in July 2001, a general comment on article 4 of the International Covenant on Civil and Political Rights that was particularly valuable. The Human Rights Committee had concluded, among other things, that the rules of international humanitarian law were applicable during an armed conflict, whether the conflict was international in nature or not. She welcomed the Human Rights Committee's initiative and said she thought that the Committee might consider appointing a special rapporteur on the question or issue more frequent requests to States parties for special reports when they declared a state of emergency. The Commission of Human Rights, too, ought to deal more systematically with the question of the protection of human rights in states of emergency; a first step might be to consider the question of the protection of human rights in situations of armed conflict. It was unfortunate that the Commission did not have a mechanism for that purpose, in view of the particularly serious human rights violations that were committed during such conflicts.

38. Mrs. DAES thanked Ms. Hampson for having raised such an important point, and noted that she herself had prepared the first United Nations study on that topic. It would certainly be a good idea to stress the need to ensure that human rights were protected in states of emergency. In her opinion, however, the Commission should concern itself more with the question of human rights during armed conflicts. Some 65 armed conflicts were currently raging around the world, and the question of human rights violations in the States affected had not been sufficiently considered. She therefore suggested asking the Commission to consider that question in the future.

39. Mr. EIDE said that the statements made by NGO representatives under agenda items 2 and 3 had shown clearly that tension and armed conflicts always led to serious human rights violations. However, one NGO representative had stated that all actions motivated by the desire

for freedom were legitimate and that all repressive acts were illegitimate. He himself did not agree with that standpoint, which took no account of the methods or means used by the parties involved. It was important to look at the means employed, as had been shown by the demonstrations that had taken place during the G8 Summit in Genoa, Italy, in July 2001, which had resulted in the death of one of the participants. There was unfortunately no suitable mechanism for ensuring that the methods and means used in conflicts observed the principle of proportionality. There was often an escalation of violence on the part of all the participants, whether members of civil society or agents of the State. It might be a good idea for the Sub-Commission to give some thought, possibly at its next session, to the kind of mechanisms that could be established to ensure that the principle of proportionality was observed.

40. The CHAIRMAN suggested that the Sub-Commission should return to the question of human rights violations which constituted crimes against humanity and which had taken place during the period of slavery and colonialism. He drew attention to the draft resolution that had been distributed to all members of the Sub-Commission in a document issued without a symbol, in French and English only.

41. Mr. ALFONSO MARTÍNEZ pointed out that the draft resolution was not yet available in all the working languages of the Sub-Commission. If the Sub-Commission nevertheless decided to consider the text with a view to adoption on the basis of the French and English versions only, such a procedure should not be considered a precedent.

42. After an exchange of views in which Mr. KARTASHKIN, Mr. EIDE, Mr. JOINET, Ms. HAMPSON and the CHAIRMAN took part, the CHAIRMAN invited the members of the Sub-Commission to consider the draft resolution as part of a preliminary discussion designed to facilitate the discussion on the text that would take place at the next meeting.

43. Mr. GUISSÉ read out the following draft resolution:

> "Flagrant and massive violations of human rights which constitute crimes against humanity and which took place during the period of slavery, of colonialism and wars of conquest
>
> 1. The Sub-Commission on the Promotion and Protection of Human Rights, referring to its decision 2000/14, draws the attention of the international community to the cases of massive and flagrant violation of human rights which should be considered as crimes against humanity and which have, to date, benefited from impunity, in spite of the tragic suffering which slavery and colonialism have inflicted on numerous peoples in the world;
>
> 2. Considers that it is not possible to combat racism and racial discrimination, struggle against impunity or denounce the human rights violations which persist in the world without taking account of the deep wounds of the past;

3. Considers that, in the framework of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it is necessary that the international community should consider the causes of those ills which, historically, have been brought about largely by slavery and colonialism;

4. Considers that the historic responsibility of the relevant Powers towards the peoples whom they colonize or reduce to slavery should be the subject of solemn and formal recognition;

5. Recalls that this responsibility is all the more well-founded since the periods of slavery and colonialism have brought about a state of economic collapse in the countries concerned, serious consequences in the social fabric and other tragedies which continue even today to affect entire peoples throughout the world;

6. Considers that the solemn and formal recognition of this historical responsibility towards the peoples concerned should include a concrete and material aspect such as rehabilitation of the dignity of the peoples affected, active cooperation in development, debt cancellation, technology transfers for the benefit of the peoples concerned and progressive restoration of cultural objects accompanied by the means to ensure their effective protection;

7. Considers that it is essential that the implementation of reparations should effectively benefit peoples - notably their most disadvantaged groups - with a view to realizing their economic, social and cultural rights;

8. Invites all the countries concerned to take initiatives which assist, notably through debate, in the raising of pubic awareness of the disastrous consequences of periods of slavery and colonialism;

9. Is convinced that such recognition and reparation will constitute the beginning of a process that will foster the institution of an indispensable dialogue between peoples for the achievement of a world of understanding, tolerance and peace;

10. Asks that a process of reflection should be initiated, in a concerted fashion, on appropriate procedures to permit the implementation of the present proposals;

11. Decades to continue its consideration of the question at its fifty-fourth session."

44. Mr. SIK YUEN suggested replacing the verb "invites" in paragraph 8, which he found somewhat weak, by "urges".

45. Mr. KARTASHKIN welcomed the draft resolution, whose merit was enhanced by the fact that its sponsors had clearly been confronted with numerous difficulties. That being the case, its presentation should perhaps be brought into line with United Nations practice by drawing a distinction between preambular and operative paragraphs.

46. Mr. FAN Guoxiang inquired about the meaning of the word "peoples" in paragraph 9. Was the idea to institute a dialogue between peoples who had been victims of slavery and colonialism and the States responsible for their suffering?

47. The CHAIRMAN suggested that a member of the Sub-Commission should record members' comments and observations so that a revised text could be submitted at the next meeting.

48. Mr. EIDE suggested that Ms. Hampson, who had a perfect command of English and French, should take on the task with Mr. Guissé's assistance.

49. Mr. GUISSÉ said that the reference in paragraph 9 to an indispensable dialogue "between peoples" was taken straight from the Charter of the United Nations, which used the term "peoples" almost invariably in preference to "States". The idea was, of course, to build peace between formerly colonized and colonizing countries. The sponsors had deliberately avoided the customary layout of a preamble followed by operative paragraphs since the text was not intended to serve a legal purpose but rather to present a set of ideas.

50. Mr. JOINET agreed that the words "between peoples" in paragraph 9 were somewhat ambiguous and proposed "peoples whom history has put in conflict" to clarify the meaning. In general, if the text as a whole was to have any impact, it should be presented, in his view, in the form of a declaration rather than a resolution. He therefore suggested inserting in paragraph 1, after the phrase "draws the attention of the international community" the words "by this declaration". He thought that the verb "invites" in paragraph 8 was well suited to a declaration.

51. Mr. SORABJEE noted that the idea of reparations was first mentioned in paragraph 7, although it was implicit in paragraph 6. He suggested that the two core ideas - recognition and reparation - should be clearly enunciated throughout the text. It was essential to specify which peoples were meant in paragraph 9.

52. Mr. PARK said he thought the wording of paragraph 1 should be improved because it was unclear whether the massive and flagrant violations of human rights should be or already were considered to be crimes against humanity. He wondered whether the "relevant Powers" in paragraph 4 were the same as the "countries concerned" in paragraph 8 and feared there might be some confusion with the "countries concerned" in paragraph 5. The English and French versions of paragraph 4 should be harmonized. He would prefer the word "urges" to "invites" in paragraph 8; the word "asks" in paragraph 10 was not strong enough and should be replaced by "requests". Lastly, he did not see the need for separate preambular and operative paragraphs.

53. Mrs. DAES proposed deleting the end of paragraph 1 after the word "impunity" because it contradicted the first part. She also thought that the idea of reparations should be clearly set forth in paragraph 6 and urged the sponsors to undertake a careful revision of the entire English version of the text.

54. Mr. EIDE suggested amending the title by adding the following opening words "Recognition of responsibility and reparation for". Moreover, the title of the French version omitted the words "wars of conquest"; they should be restored. The Tobin tax should be added to the list of reparations in paragraph 6. The word "permit" in paragraph 10 should be replaced by "enable".

55. Ms. HAMPSON, responding to comments, proposed using the original French version of the text wherever possible. Pointing out that the title was identical to that of Sub-Commission decision 2000/114, she asked whether there was a consensus in favour of adopting Mr. Eide's proposed amendment. She agreed with Mr. Joinet that the text should take the form of a declaration, which would give it greater weight and eliminate the need for a traditional layout in the form of preambular and operative paragraphs. With regard to paragraph 1, the Commission on Human Rights had already declared, at its fifty-sixth session, that the violations in question constituted crimes against humanity.

56. The term "the countries concerned" in paragraph 8, which was broader than "the relevant Powers" in paragraph 4, had been used because the initiatives contemplated could be taken by different actors. The sponsors had not wished to approach the question of reparations from a technical angle and had therefore simply provided examples of reparations in paragraph 6. In the light of the comments on that key point, she suggested amending the beginning of paragraph 7 to read: "Considers that it is essential that the implementation of the reparations mentioned in the preceding paragraph ...". With regard to the clarification of the words "between peoples" in paragraph 9, Mr. Joinet's suggestion raised problems because the words "whom history has put in conflict" was clumsy in English. Obviously, the peoples referred to throughout the text were those who had suffered massive human rights violations; on the other hand, paragraph 9 clearly referred to all peoples.

57. The suggestion that the word "invites" in paragraph 8 should be replaced by "urges" could complicate the task of choosing a verb in paragraph 10. In the same paragraph, she agreed that the word "enables" was preferable to "permits".

58. Mr. OLOKA-ONYANGO expressed support for the proposed amendment to the title. If the words "and reparation" were added at the end of paragraph 4, there would be no need to insert the words "mentioned in the preceding paragraph" in paragraph 7. While recognition did not necessarily imply regret or apologies, it should nevertheless be mentioned in paragraph 4. He proposed adding the words "and consequences" after "causes" in paragraph 3. In paragraph 7, the phrase following the second dash should be amended to read "with special attention being paid to the realization of their economic, social and cultural rights".

59. Ms. TERAO asked whether the word "ills" in paragraph 3 was strong enough. She suggested using a variant of the wording proposed by Mr. Joinet in paragraph 9 to clarify the meaning of the word "peoples".

60. Mr. JOINET expressed support for the idea of recasting the entire text in the form of a declaration, and for the suggestion to refer to "the causes and consequences" in paragraph 3, to make the idea of reparations explicit, to include the Tobin tax in the list of reparations and to amend the beginning of paragraph 8. He proposed the following wording: "Requests, on the occasion of the Durban Conference, that the countries concerned take initiatives ...".

61. Mr. OGURTSOV said he thought a resolution was preferable to a declaration, which was in no way binding. At all events, the text needed further study and its wording should be carefully revised to avoid any ambiguity. In particular, paragraph 8 should clarify the meaning of "all the countries concerned".

62. The CHAIRMAN said that the present discussion of the draft text was somewhat informal. The text would later be made available to observers.

63. Mr. JOINET said he thought that the preliminary version should not be distributed.

64. Ms. ZERROUGUI said that Mr. Joinet's proposal to refer to the Durban Conference in paragraph 8 was useful and merited attention.

65. Mrs. WARZAZI said that the sponsors had sought to draft a simple unambiguous text without innuendoes that could be adopted as quickly as possible. In her view, the text should not raise any problems.

The meeting rose at 6.05 p.m.